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In this chapter. . .

A respondent may enter a plea of admission or no contest to allegations contained in a petition. If the court accepts a respondent's plea, the court takes jurisdiction over a child or children involved in the case. This chapter sets forth the rules governing the taking of pleas of admission or no contest. It discusses when a plea may be entered, required advice of rights, and establishing a factual basis for a plea. The effect of a plea by one respondent is also noted.

A parent may consent to the termination of his or her parental rights. See Section 18.14.

10.1 When a Respondent May Make a Plea of Admission or No Contest

MCR 3.971(A) states as follows:

“(A) *General.* A respondent may make a plea of admission or of no contest to the original allegations in the petition. The court has discretion to allow a respondent to enter a plea of admission or a plea of no contest to an amended petition. The plea may be taken at any time after the filing of the petition, provided that the petitioner and the attorney for the child have been notified of a plea offer to an amended petition and have been given the opportunity to object before the plea is accepted.”

Pleas to amended petitions. Pleas to amended petitions are common in child protective proceedings, and many pleas to amended petitions result from plea agreements. Although child protective proceedings are not criminal proceedings, the rules governing plea agreements in criminal cases may be instructive. See Miller, *Juvenile Justice Benchbook: Delinquency*

and Criminal Proceedings (Revised Edition) (MJI, 2003), Section 8.6, for a discussion of plea agreements in criminal cases involving juveniles, and Section 10.6, below, for a discussion of the rules governing the withdrawal of pleas in child protective proceedings.

Note, also, that an amendment to the petition may affect subsequent treatment of the respondent. The treatment regime specified in the Case Service Plan is based upon the needs of the family rather than upon the allegations in the petition. However, if the allegations in the amended petition bear little or no resemblance to those that were contained in the original petition, it may be wise to include specific treatment programs and goals in any plea agreement. If a respondent-parent objects to the prescribed treatment, the court may examine the issue at a review hearing. See Chapter 16. The court has the authority to order the parent to attend classes or counseling if it is “necessary for the physical, mental, or moral well-being” of the child under its jurisdiction. See *In re Macomber*, 436 Mich 386, 389–93, 398–400 (1990). Furthermore, if the prosecuting attorney has agreed not to proceed on some of the allegations in the original petition (“nolle prosequi”) rather than dismissing them, those allegations could later be reinstated and a trial of them held.

Plea by one respondent-parent. Once jurisdiction over a child has been established through one respondent-parent’s plea or at a trial of allegations against one respondent-parent, another parent has no right to demand a jury trial of allegations against him or her. Once jurisdiction over a child has been established, the jury has no further function and a court may proceed to the dispositional phase of the proceedings. *In re CR*, 250 Mich App 185, 205 (2002).

10.2 Required Advice of Rights and Possible Disposition

MCR 3.971(B) states that the court must provide a respondent certain advice before accepting that respondent’s plea of admission or no contest. That rule states as follows:

“(B) *Advice of Rights and Possible Disposition.* Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:

“(1) of the allegations in the petition;

“(2) of the right to an attorney, if respondent is without an attorney;

“(3) that, if the court accepts the plea, the respondent will give up the rights to

- (a) trial by a judge or trial by a jury,
- (b) have the petitioner prove the allegations in the petition by a preponderance of the evidence,
- (c) have witnesses against the respondent appear and testify under oath at the trial,
- (d) cross-examine witnesses, and
- (e) have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;

“(4) of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent.”

10.3 Requirement of a Knowing, Understanding, Voluntary, and Accurate Plea

Before accepting a plea, the court must satisfy itself that the plea is knowingly, understandingly, and voluntarily made. MCR 3.971(C)(1). The court must also establish the accuracy of a plea. MCR 3.971(C)(2).

Knowing and understanding plea. The court may establish that the respondent's plea is knowingly and understandingly made by advising him or her as required by MCR 3.971(B).^{*} The court need not ask respondent directly if his or her plea is knowingly made. *In re King*, 186 Mich App 458, 466–67 (1990) (trial court's lengthy discussion with respondent regarding a plea agreement clearly showed that plea was knowingly made).

^{*}See Section 10.2, immediately above.

Voluntary plea. The court may establish that the plea is voluntarily made by confirming any plea agreement on the record and asking the respondent and all attorneys of record if any promises have been made beyond those in the agreement, or if anyone has threatened the respondent. See MCR 3.941(C)(2)(a)–(b) (delinquency proceedings) and MCR 6.302(C)(4)(a)–(c) and MCR 6.302(E) (pleas in felony cases).

Accurate plea. The court must establish support for a finding that at least one statutory ground for jurisdiction has been established. If the respondent is entering a plea of admission, the accuracy of the plea should be established by questioning the respondent. MCR 3.971(C)(2) states:

“(2) *Accurate Plea.* The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest. If

the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate.”

See *In re Waite*, 188 Mich App 189, 193–96 (1991) (inadequate factual basis established at plea proceeding), and *In re Youmans*, 156 Mich App 679, 684 (1986) (jurisdiction cannot be conferred on the Family Division by consent of the parties).

10.4 Special Requirements for No Contest Pleas

If the respondent wishes to plead no contest, the court must not question the respondent to establish support for a finding that the respondent committed the offense against the child but must use some other means. The court must also state why a plea of no contest is appropriate. MCR 3.971(C)(2). See *Guilty Plea Cases*, 395 Mich 96, 134 (1975), for a discussion of appropriate reasons to accept a plea of no contest, which include a desire to limit liability.

10.5 Records of Plea Proceedings

MCR 3.925(B) states as follows:

“(B) *Record of Proceedings.* A record of all hearings must be made. All proceedings on the formal calendar must be recorded by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108. A plea of admission or no contest, including any agreement with or objection to the plea, must be recorded.”

10.6 Withdrawal of Pleas

A respondent must raise issues concerning the court’s non-compliance with the court rule governing pleas prior to appeal. *In re Campbell*, 170 Mich App 243, 249–50 (1988). Although child protective proceedings are not criminal proceedings, rules governing the withdrawal of pleas in criminal proceedings may be relied upon in child protective proceedings. *In re Zelzack*, 180 Mich App 117, 125–26 (1989).

Juveniles charged as delinquents and criminal defendants have the right to withdraw a plea before it is accepted, and the court has discretion to allow a juvenile or criminal defendant to withdraw a plea after it has been accepted.

See MCR 3.941(D) (delinquency proceedings) and MCR 6.310 and MCR 6.311 (criminal proceedings).

In *Zelzack, supra* at 126, the respondent-father and the Department of Social Services (DSS, now Family Independence Agency) entered a plea agreement whereby the respondent would plead no contest in exchange for DSS' entry into a service agreement. The service agreement called for reunification of the respondent with his daughter if the respondent complied with the service agreement. The respondent failed to comply with the service agreement, and the trial court terminated his parental rights. The Court of Appeals held that the trial court did not err in refusing to allow the respondent to withdraw his plea.

10.7 Combined Adjudicative and Dispositional Hearings

MCR 3.973(B), which governs notice of dispositional hearings, contemplates a combined adjudicative and dispositional hearing. That rule states that “[u]nless the dispositional hearing is held immediately after the trial, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with MCR 3.920.” Moreover, MCR 3.973(C) assigns to the court’s discretion the interval between a trial and dispositional hearing (though not to exceed 35 days when a child is in placement). Thus, the two hearings may be combined if necessary preparations are completed prior to the hearing. Most importantly, a Case Service Plan must be prepared prior to the hearing. See MCR 3.973(E)(2).

Combined hearings are often conducted when the allegations in the petition are uncontested.

